



DEPARTMENT OF
FINANCE
OFFICE OF THE DIRECTOR

GRAY DAVIS, GOVERNOR

STATE CAPITOL ■ ROOM 1145 ■ SACRAMENTO CA ■ 95814-4998 ■ WWW.DOF.CA.GOV

August 29, 2002

RECEIVED**AUG 30 2002****COMMISSION ON
STATE MANDATES**

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Dear Ms. Higashi:

As requested in your letter of August 2, 2002, the Department of Finance has reviewed the test claim submitted by the County of Alameda (claimant) asking the Commission to determine whether specified costs incurred under Chapter No. 572, Statutes of 2001 (SB 66, Kuehl) and Chapter No. 713, Statutes of 2001 (AB 1129, Liu) are reimbursable state mandated costs (Claim No. CSM-01-TC-29 "Domestic Violence Background Checks"). Commencing with page 1, of the test claim, claimant has identified the following new duties, which it asserts are reimbursable state mandates:

- Performing an investigation of the history of a defendant charged with domestic violence.
- Searching all relevant databases for a history of domestic violence, restraining orders, or other protective orders against the defendant.
- Searching the following specified databases:
 - Violent Crime Information Network
 - Supervised Release File
 - State summary criminal history information maintained by the Department of Justice
 - Federal Bureau of Investigation's nationwide data base
 - Locally maintained criminal history or data bases
- Present information obtained as a result of this investigation to the court at any hearing when bond is set, a defendant is released on his or her own recognizance at a preliminary hearing, or upon the consideration of any plea agreement.

As the result of our review, we have concluded that the statute may have resulted in a reimbursable state-mandated local program related to the activities specified above when performed by the District Attorney or prosecuting city attorney. However, we note that although the test claim identifies Family Code Sections 6300 and 6306, Penal Code Section 273.75, and Welfare and Institutions Code Section 213.5, as the sections that contain the mandate, the activities claimed are only referenced in Penal Code Section 273.75. Therefore, this test claim should only apply to the relevant section. The other sections of law referenced impose requirements on the courts, which are already fully funded by the State and therefore would not be eligible to receive State reimbursements. In addition, the claimant has not identified any court activities as new activities or higher levels of service imposed on local government.

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If the Commission reaches the same conclusion at its scheduled hearing on the matter, the nature and extent of the specific activities required can be addressed in the parameters and guidelines which will then have to be developed for the program.

As required by the Commission's regulations, we are including a "Proof of Service" indicating that the parties included on the mailing list which accompanied your August 2, 2002 letter have been provided with copies of this letter via either United States Mail or, in the case of other state agencies, Interagency Mail Service.

If you have any questions regarding this letter, please contact Marcia Caballin, Principal Program Budget Analyst at (916) 445-8913 or Keith Gmeinder, state mandates claims coordinator for the Department of Finance, at (916) 445-8913.

Sincerely,



S. Calvin Smith
Program Budget Manager

Attachments

Attachment A

DECLARATION OF SARAH MANGUM
DEPARTMENT OF FINANCE
CLAIM NO. CSM-01-TC-29

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.
2. We concur that the Chapter No. 572, Statutes of 2001, (SB 66, Kuehl) and Chapter No. 713, Statutes of 2001 (AB 1129, Liu) sections relevant to this claim are accurately quoted in the test claim submitted by claimants and, therefore, we do not restate them in this declaration.
3. Attachment B is a true copy of Finance's analysis of SB 66 prior to its enactment as Chapter No. 572, Statutes of 2001, (SB 66, Kuehl) and AB 1129 prior to its enactment as Chapter No. 713, Statutes of 2001, (AB 1129, Liu).

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

8-29-02

at Sacramento, CA


Sarah Mangum

PROOF OF SERVICE

Test Claim Name: Domestic Violence Background Checks
Test Claim Number: CSM-01-TC-29

I, the undersigned, declare as follows:

I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, 8th Floor, Sacramento, CA 95814.

On, August 29, 2002, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 915 L Street, 8th Floor, for Interagency Mail Service, addressed as follows:

A-16

Ms. Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
Facsimile No. 445-0278

B-8

State Controller's Office
Division of Accounting & Reporting
Attention: Michael Havey
3301 C Street, Room 500
Sacramento, CA 95816

B-29

Legislative Analyst's Office
Attention Marianne O'Malley
925 L Street, Suite 1000
Sacramento, CA 95814

Mandate Resource Service
Attention: Harmeet Barksokat
5325 Elkhorn Blvd. #307
Sacramento, CA 95842

Cost Recovery Systems
Attention: Annette Chinn
705-2 East Bidwell Street #294
Folsom, CA 95630

County of Los Angeles
Attention: Leonard Kaye
Auditor-Controller's Office
500 W. Temple Street, Room 603
Los Angeles, CA 90012

Mandated Cost Systems, Inc.
Attention: Steve Smith
11130 Sun Center Drive, Suite 100
Rancho Cordova, CA 95670

California State Association of Counties
Attention: Steve Keil
1100 K Street
Sacramento, CA 95814-3941

Centration, Inc.
Attention: Andy Nichols
12150 Tributary Point Drive, Suite 140
Gold River, CA 95670

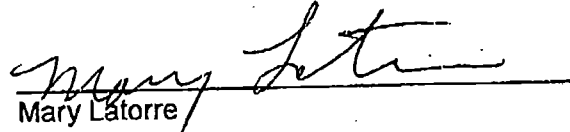
MAXIMUS
Attention: Pam Stone
4320 Auburn Blvd., Suite 2000
Sacramento, CA 95841

Spector, Middleton, Young & Minney, LLP
Attention: Paul Minney
7 Park Center Drive
Sacramento, CA 95825

County of Alameda
County Administrator's Office
Attention: Thomas J. Orloff
1221 Oak Street Room 555
Glendale, CA 94612-4296

David Wellhouse & Associates, Inc.
Attention: David Wellhouse
9175 Kiefer Blvd. Suite 121
Sacramento, CA 95826

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on August 29, 2002 at Sacramento, California.


Mary Latorre

DEPARTMENT OF FINANCE BILL ANALYSIS

AMENDMENT DATE: July 16, 2001
 POSITION: No position
 SPONSOR: California National Organization for Women

BILL NUMBER: AB 1129
 AUTHOR: C. Liu

BILL SUMMARY: Juvenile Court Proceedings

This bill would allow the juvenile dependency court to issue a restraining order to protect a child's parent or guardian from the specified behavior of any other persons or to exclude such a person from the same household.

FISCAL SUMMARY

Staff from the Judicial Council and the Department of Justice (DOJ) indicate that any costs resulting from this bill would be minor and could be met within existing resources.

Any local government costs resulting from the mandate in this measure would not be State-reimbursable because the mandate only involves the definition of a crime or the penalty for conviction of a crime. However, the creation of a new crime could increase the number of cases entering the court system, which would create pressure for additional State funding, cause delay of civil cases, and/or create pressure for additional State funding.

COMMENTS

Existing law allows the juvenile dependency court to issue ex parte orders enjoining any parent, guardian, or current or former member of the child's household from molesting, attacking, striking, sexually assaulting, stalking, or battering the child or any other child in the household, excluding an individual from the dwelling of the person who has care, custody, and control of the child, and/or enjoining an individual from certain behaviors, such as contacting, threatening, or disturbing the peace of the child.

This bill would allow a court issuing a restraining or protective order for a child to simultaneously issue a similar ex parte order to 1) enjoin any person from contacting, threatening, molesting, attacking, striking, sexually assaulting, stalking, battering, or disturbing the peace of any parent or guardian of the child, regardless of whether or not the child resides with that parent or guardian, or 2) exclude any person from the household of the person who has care, custody and control of the affected child.

Under current law a parent or guardian of a child who is protected by a restraining or protective order would be required to file a separate action in family or civil court to receive the same protection. It is our understanding that this bill is intended to streamline this process for families in crisis.

DOJ operates the Domestic Violence Restraining Order System which tracks restraining orders, including those issued by the juvenile dependency court. According to DOJ staff, out of over 200,000 orders currently in the system, less than 800 come from the juvenile court system. Therefore, they do not believe this bill will result in a significant expansion of the current tracking system.

Analyst/Principal (0213) T. Jerue	Date 8/10/01	Program Budget Manager S. Calvin Smith	Date 8/14/01
Department Deputy Secretary signed by Robert D. Miyashiro		Date AUG 15 2001	

Governor's Office:	By: AR	Date: 8/16/01	Position Noted Position Approved <input checked="" type="checkbox"/> Position Disapproved
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BILL ANALYSIS

CG:AB1129-1685 8/10/01 11:48 AM

Form DF-43 (Rev 03/95 Buff)

(2)

BILL ANALYSIS/ENROLLED BILL REPORT--(CONTINUED)**Form DF-43**
BILL NUMBER**AUTHOR****AMENDMENT DATE**

C. Liu

July 16, 2001

AB 1129

Code/Department Agency or Revenue Type	SO	(Fiscal Impact by Fiscal Year)								Fund Code
	LA	(Dollars in Thousands)								
	CO	PROP	FC	2001-2002		2002-2003		2003-2004		
	RV	98		FC	FC	FC	FC			
0250/Judiciary	SO	No			No/Minor Fiscal Impact				0001	
0450/Trial Court	LA	No			No/Minor Fiscal Impact				0001	
0820/Justice	SO	No			No/Minor Fiscal Impact				0001	

DEPARTMENT OF FINANCE BILL ANALYSIS

AMENDMENT DATE: July 18, 2001
POSITION: Oppose

BILL NUMBER: SB 66
AUTHOR: S. Kuehl

BILL SUMMARY: Domestic Violence: Protective Orders

This bill would require courts and prosecutors to perform criminal background checks during the consideration of a domestic violence-related protective order and notify certain entities of the results of such a search.

FISCAL SUMMARY

Judicial Council staff indicate that this bill would result in General Fund costs ranging from \$714,000-\$1,474,000 million in fiscal year 2001-02 \$772,000-1,452,000 annually thereafter.

To the extent that the costs for fiscal year 2001-02 cannot be redirected within existing resources, an appropriation would be necessary to fund these costs. Absent an appropriation, the Judicial Council and the trial courts may have to delay implementation of the bill until July 1, 2002.

Staff from the Department of Justice (DOJ) indicate that this bill would result in General Fund costs of approximately \$648,000 in fiscal year 2002-03, \$177,000 in fiscal year 2003-04, and \$79,000 in each subsequent year. Any request for additional expenditure authority would be subject to approval through the annual budget process.

In addition, this bill would result in a reimbursable state-mandated local program related to the requirements it would place on local law enforcement, district attorneys, and parole and probation offices. At this time we are unable to estimate the exact cost of this mandate, however it could result in significant General Fund costs. The exact amount would depend on a variety of factors such as the number of background searches conducted by city or district attorneys as a result of this legislation, and the number of these searches that find that there is an outstanding warrant or that the individual is on parole or probation.

COMMENTS

The Department of Finance is opposed to this measure since it would result in General Fund costs that are not included in the 2001 Budget Act. In addition, this bill could result in a reimbursable state-mandated local program that could result in potentially significant costs to the State.

Analyst/Principal (0213) T. Jerue	Date 8/19/01	Program Budget Manager S. Calvin Smith	Date 8/14/01
Department Deputy Director	Original signed by Robert D. Miyashiro		Date AUG 19 2001
Governor's Office:	By: <i>PK</i>	Date: 8/20/01	Position Noted Position Approved Position Disapproved
BILL ANALYSIS			Form DF-43 (Rev 03/95 Buff)

CG :SB66-2302 8/9/01 7:16 AM

(2)

BILL ANALYSIS/ENROLLED BILL REPORT--(CONTINUED)
AUTHOR **AMENDMENT DATE**

Form DF-43
BILL NUMBER

S. Kuehl

July 18, 2001

SB 66

ANALYSIS**A. Programmatic Analysis**

Existing law authorizes the court to issue restraining and protective orders to prevent the recurrence of domestic violence and to children and family members involved in juvenile delinquency and dependency hearings.

This bill would require that the court:

- Ensure that a background search is conducted to determine if a subject of a proposed restraining order has any prior criminal convictions involving domestic violence, weapons, or other violence, has any outstanding warrants, is on parole or probation, or is the subject of any current or prior restraining orders, prior to a hearing on issuing or denying a restraining order to prevent the recurrence of domestic violence.
- Conduct the background search of all records and databases readily available and reasonably accessible to the court, including but not limited to specified databases.
- Release information obtained through a background search, and considered by the court, to the parties and their attorneys at the time of the hearing.
- Read into the public record of the case and reflect in the minute order, any information obtained through a background search and considered by the court.
- Forward a copy of the minute order to the family court services mediator and/or the child custody evaluator appointed by the court.
- If the results of the background search indicate that an outstanding warrant exists, immediately notify the appropriate law enforcement officials.
- If the results of the background search indicate that the individual is currently on parole or probation, immediately notify the appropriate parole or probation officer of the issuance of any protective order.

In addition, a variety of individuals or local agencies would be required to respond to the results of the background search conducted by the courts by taking specified actions. These include:

- The mediator or evaluator would be required to consider the minute order and any related criminal history as appropriate.
- Local law enforcement officials would be required to take all necessary actions to execute any outstanding warrants.
- The parole or probation officer would be required to take all actions necessary to revoke any parole or probation as appropriate.

This bill would also require that the district attorney or city attorney take the following actions on any charge involving acts of domestic violence:

- Perform or cause to be performed a background search of the defendant's history of prior convictions for domestic violence, other forms of violence, weapons offenses, and any current protective or restraining order. This search would be conducted through the use of specified databases.
- Present the information obtained from this search for consideration of the court when setting a bond, releasing the defendant, and/or considering a plea agreement.
- Send information on any order issued to any other court that issued a current restraining or protective order against the same individual.

(Continued)

(3)

BILL ANALYSIS/ENROLLED BILL REPORT--(CONTINUED)
AUTHOR **AMENDMENT DATE**

Form DF-43
BILL NUMBER

S. Kuehl

July 18, 2001

SB 66

ANALYSIS (contd.)**A. Programmatic Analysis (continued)**

This bill could result in slower processing of protective and restraining orders, a delay which could endanger the safety of those who are seeking a restraining order. We note that various judges associations have raised concerns that this bill would set a precedent by requiring court employees to perform investigative and law enforcement functions. It is our understanding that there is also some concern about allowing court staff the public to have access to criminal history information that is generally confidential.

B. Fiscal Analysis

Requiring the courts to perform background searches of the specified individuals would result in a significant increase in workload for the courts. Judicial Council estimates that this bill would result in General Fund costs ranging from \$714,000-\$1,474,000 in fiscal year 2001-02 and \$772,000-\$1,452,000 annually thereafter. This estimate is based on one-time costs for acquiring the necessary technology to conduct background searches and ongoing costs for the court employee workload to conduct these searches and meet notification requirements in a timely manner. Judicial Council has estimated that in order to implement this bill the trial courts throughout the State would need to add approximately 34 employees.

DOJ could also incur costs as a result of this bill because they maintain databases that would be used to conduct the background searches. If there are additional entities, such as the courts and district and city attorneys who need to search these databases there could be an increase in workload for DOJ. DOJ indicates that this bill would result in General Fund costs of approximately \$648,000 in fiscal year 2002-03, \$177,000 in the fiscal year 2003-04, and \$79,000 in each subsequent year. These costs are based on data processing, the cost to make modifications to the Domestic Violence Restraining Order System, application development, file management, and a need to add one additional Association Programmer Analyst position to provide ongoing maintenance.

The California Constitution requires the State to reimburse local government for the costs of any program or increased level of service mandated by the Legislature or any State agency. This bill would require a number of local agencies to perform new or additional duties dealing with the issuance and enforcement of restraining orders. Local entities that have specific requirements under this bill are local law enforcement agencies, parole and probation offices, district and city attorneys, and family court services mediators and child custody evaluators who are appointed by the court but are employees of the local child/social services agency. In addition, it is possible that the requirement that courts and district and city attorneys conduct background searches could result in additional work for local agencies that keep criminal history data due to any searches of this data that would need to be conducted.

The requirements contained in this bill would result in a state-mandated local program that could result in potentially significant General Fund costs. At this time we are unable to estimate the exact cost of this mandate, which would depend upon a variety of factors such as the number of background searches conducted by city or district attorneys as a result of this legislation and the number of these searches that find that there is an outstanding warrant or that the individual is on parole or probation.

(4)

BILL ANALYSIS/ENROLLED BILL REPORT--(CONTINUED)**Form DF-43****AUTHOR****AMENDMENT DATE****BILL NUMBER**

S. Kuehl

July 18, 2001

SB 66

Code/Department Agency or Revenue Type	SO LA CO	(Fiscal Impact by Fiscal Year) (Dollars in Thousands)							Fund Code
		PROP							
	RV	98	FC	2001-2002	FC	2002-2003	FC	2003-2004	
0820/Justice	SO	No		-	C	\$648	C	\$177	0001
0450/Trial Court	LA	No	C	\$714 - 1,474	C	\$772 - 1,452	C	\$772 - 1,452	0001